



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/287,664 04/07/99 RUSSO

D 01222.0034-0

IM22/1018  
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EXAMINER

BRUNSMAN, D

ART UNIT

PAPER NUMBER

1755

DATE MAILED:

10/18/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Notice of Abandonment**

Application No.

09/287,664

Examiner

David M Brunzman

Applicant(s)

RUSSO ET AL.

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 31 Oct 2000

(a) ☒ A reply was received on 15 August 2001 (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of 3 month(s)) which expired on 01 May 2001.

(b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).

(c) ☐ No reply has been received.

2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

(a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance.

(b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.

The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.

(c) ☐ The issue fee and publication fee, if applicable, has not been received.

3. ☐ Applicant's failure to timely file new formal drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).

(a) ☐ Proposed new formal drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.

(b) ☐ The proposed new formal drawings filed on \_\_\_\_\_ are not acceptable and the period for reply has expired.

(c) ☐ No proposed new formal drawings have been received.

4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. ☒ The reason(s) below:

See attachment.



David M Brunzman  
Primary Examiner  
Art Unit: 1755

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The response filed 15 August 2001 is not timely. In response to the prior response filed 09 May 2001, deemed to be non-responsive, applicant was given a one month time period to supply the omission or correction needed to avoid abandonment. While extensions of the time period are available under 37 C.F.R. 1.136(a), the period for response may not be extended past the statutory period in force. See the regulation reproduced below.

**§ 1.136 Extensions of time.**

(a)

- (1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:
  - (i) Applicant is notified otherwise in an Office action;
  - (ii) The reply is a reply brief submitted pursuant to § 1.193(b);
  - (iii) The reply is a request for an oral hearing submitted pursuant to § 1.194(b);
  - (iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.196, § 1.197 or § 1.304; or
  - (v) The application is involved in an interference declared pursuant to § 1.611.

The outstanding rejection in the application was mailed 31 October 2000. The shortened statutory period of three months was extendable to a maximum of 6 months, 01 May 2001.



DAVID BRUNSMAN  
PRIMARY EXAMINER  
GROUP 1100